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**EX PARTE MEMORANDUM**  
**PP DOCKET NO. 93-253<sup>1</sup>**  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

**Summary**

The Commission's application of the "tribal affiliation rule" can be limited in application to tribes and Alaska Native Corporations (ANC's) with total membership in excess of 1,000 members of shareholders. The purpose of this limitation would be to exclude from coverage tribes that have limited membership but substantial assets and/or revenues.

**Analysis**

This memorandum addresses the question of using tribal membership numbers (or Alaska Native Corporation shareholder numbers) as a criteria for application of the "tribal affiliation rule".<sup>2</sup> The central policy rationale for the tribal affiliation rule is that Native American tribes and ANCs are forced aggregations of relatively poor individuals and that such tribes and ANCs have restrictions on their assets and revenues which place unique restraints on their ability to access capital. This problem is particularly acute when a tribe or ANC's resources must be used to benefit a great number of members or shareholders.

In integrating the tribal affiliation rule with the definition of a "small business" under the Commission's rules, it is reasonable to consider two factors: 1) a tribal entity with a small number of members and limited assets and revenues per member can qualify as "small" under the Commission's rules without the necessity of the tribal affiliation rule, and 2) a tribal entity with a small number of members but substantial assets and revenues per member would fall outside the policy basis for the tribal affiliation rule.

Accordingly, it appears to us that application of the tribal affiliation rule to the Commission's small business standards can be based upon a tribal membership number as a criterion.

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<sup>1</sup> Two copies of this memorandum have been submitted to the Office of the Secretary for inclusion in the record of this proceeding.

<sup>2</sup> See Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Order on reconsideration, FCC 94-217 (rel. Aug. 15, 1994) ("Order on Reconsideration").

As an entity which has a relationship with a number of Native American entities nationwide, we are generally familiar with the economic status of tribes and ANCs in the United States. Based on that familiarity, we believe that a criterion of one thousand (1,000) tribal members or ANC shareholders would be appropriate and reasonable. Several factors underscore this:

- (1) It is the tribes with the larger memberships which particularly feel the economic and social burden of many members and their long-term needs in managing limited tribal assets and revenues.
- (2) Those tribes which would be excluded from application of the tribal affiliation rule by the 1,000 member size criterion would probably qualify in any case as a "small" under the Commission's existing tests. Tribes with a few members but uniquely high assets and revenues per tribal member would be excluded. Such tribes and their members would not face the impairments to access to capital which are the basis for the tribal affiliation rule.
- (3) We believe that the above size criterion would limit the applicability of the tribal affiliation rules to a relatively small number of Native American tribes and less than ten-percent of the total number of ANCs.
- (4) The membership distinctions in this range have been followed by the federal government in similar contexts. The Department of Labor has issued guidelines for the qualification of tribes and ANCs for employment and programs under the Job Training Partnership Act. A Native American applicant for these programs must have at least 1,000 persons of Native American descent within a geographically-defined "service area". 20 C.F.R. §632.10(b). The Department of Labor also administers a grants program to stimulate community service. To be eligible for these grants, a Native American "tribal organization" must have an identifiable resident population of at least 1,000 persons. 29 C.F.R. § 89.3.

In conclusion, we believe that a qualification of 1,000 tribal members in the case of a tribe, or 1,000 shareholders in the case of an Alaska Native Corporation, is a reasonable basis for limiting application of the tribal affiliation rule in determining that an applicant affiliated with a tribe or ANC is "small".